



***The Public Service Commission  
State of South Carolina***

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July 6, 2006

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**Certified Mail**  
**Return Receipt Requested**

Bonnie D. Shealy, Esquire  
Robinson, McFadden & Moore, PC  
P. O. Box 944  
Columbia, SC 29202

Jeffrey M. Nelson, Esquire  
Office of Regulatory Staff  
P.O. Box 11263  
Columbia, SC 29211

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JUL 06 2006

PSC SC  
DOCKETING DEPT.

Re: Telmex USA, LLC  
Commission Docket No. 2005-365-C

Dear Bonnie and <sup>Jeff</sup>Jeffrey:

Enclosed please find a proposed order in the above-captioned docket, which is being delivered to you pursuant to the requirements of 26 S.C. Code Ann. Regs. 103-865 (C). As parties of record in this Telmex case, you have ten (10) days from your receipt of this proposed order to file exceptions, present briefs, and/or file written requests for oral argument to the Commission, if you should desire to do so. If none of these are received by me within 10 days of your receipt of the proposed order, I will request that the Commission issue its order in this case based upon the record of the formal proceeding and the proposed order.

Thank you in advance for your consideration in this matter.

Sincerely,

F. David Butler  
Hearing Examiner

FDB/dd  
cc: Joseph Melchers, Chief Legal Advisor

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2005-365-C - ORDER NO. 2006-  
JULY 6, 2006

IN RE: Application of Telmex USA, LLC for a	) ORDER
Certificate of Public Convenience and	) GRANTING
Necessity for Authority to Provide Intrastate	) CERTIFICATE, AND
Telecommunications Services within the State	) APPROVING MODIFIED
of South Carolina and Request for Alternative	) ALTERNATIVE
Regulation of its Business Service Offerings	) REGULATION -
and All Calling Card Service Offerings within	) PROPOSED ORDER OF
the State of South Carolina.	) THE HEARING
	) EXAMINER

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Telmex USA, LLC (“Telmex” or the “Company”) requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate telecommunications services within the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2005) and the rules and regulations of the Commission. By its Application, Telmex also requests modified alternative regulation of its business services offerings identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C as modified by Order No. 2001-997, and waiver of certain Commission regulations.

The Commission’s Docketing Department instructed Telmex to publish, one time, a Notice of Filing in newspapers of general circulation in the areas of the state affected by

the Application. The purpose of the Notice of Filing was to inform interested parties of the Application of Telmex and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. Telmex complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

Subsequently, Telmex and ORS filed a Settlement Agreement, which is attached hereto as Order Exhibit 1. A hearing was convened on June 26, 2006, at 10:00 a.m. in the Commission's Law Library, Columbia, South Carolina, before David Butler, Hearing Examiner. Telmex was represented by Bonnie D. Shealy, Esquire. The Office of Regulatory Staff (ORS) was represented by Jeffrey M. Nelson, Esquire.

Alex Marban, Controller for the Company, appeared and testified in support of the Application. Mr. Marban also adopted the prefiled written testimony of Jorge Rodriquez, President of the Company. The record reveals that Telmex is a Limited Liability Company formed under the laws of the State of Delaware and has registered to transact business in South Carolina as a foreign Limited Liability Company. According to Mr. Marban, Telmex seeks authority as a switched based reseller to provide long distance telecommunications in the State of South Carolina. Initially, Telmex's intrastate services will consist primarily of prepaid calling cards that can be assessed twenty-four hours a day, seven days a week from any touchtone telephone using toll free access numbers. The cards may be used for both domestic and international calling, and are normally issued in \$5.00 denominations.

Mr. Marban testified that Telmex's computer equipment informs the customer of the amount of balance remaining on the card each time it is used. As the user places and

completes calls over the network in accordance with the instructions on the prepaid card, the prepaid card is reduced at a specified unit or rate per minute of use depending upon the type of card. The prepaid card may be used until the balance is depleted. Mr. Marban stated that the Company was aware that it would be required to post a \$5,000 bond with the Commission prior to offering pre-paid card services in South Carolina. In addition to prepaid card services, Telmex will be offering interstate and international private line, frame relay, and ATM services to business customers. Mr. Marban explained the remainder of the Company's request for authority, and the record further reveals the Company's services, operations, and marketing procedures.

Mr. Marban also discussed Telmex's technical, financial, and managerial resources to provide the services for which it seeks authority. Mr. Marban offered that Telmex possesses sufficient financial resources to support its operations in South Carolina. With regard to management and technical capabilities, the Company has not been denied a license in any of the states in which it has applied, nor has it had a license revoked in any jurisdiction. The Company's Application and Mr. Marban's testimony both evidence that Telmex's management team has extensive experience in telecommunications, information technology, regulatory matters, and accounting and finance. Mr. Marban also testified that Telmex will operate in accordance with Commission rules, regulations, guidelines, and Commission Orders.

Mr. Marban offered that approval of Telmex's Application would serve the public interest by increasing the level of competition in South Carolina. Mr. Marban, on behalf of the Company, requests a waiver of 26 S.C. Code Ann. Regs.103-610 and to be allowed

to keep the Company's books at its headquarters. Further, the Company requests an exemption from record keeping policies that require maintenance of financial records in conformance with the Uniform System of Accounts (USOA). Telmex maintains its books in accordance with Generally Accepted Accounting Principles (GAAP).

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. Telmex is a Limited Liability Company formed under the laws of the State of Delaware and is authorized to do business in South Carolina by the Secretary of State.

2. Telmex has no reported record of violations of regulatory laws or regulations in the jurisdictions in which it is currently operating.

3. Telmex desires to operate as a provider of switched resold interexchange services in South Carolina.

4. We find that Telmex possesses the managerial experience and capability to operate as a provider, through resale, interexchange services in South Carolina.

5. We find, based on the financial statements submitted by the Company, that Telmex possesses sufficient financial resources to provide the services as described in its Application and testimony.

6. We find that the issuance of a Certificate of Public Convenience and Necessity to Telmex to operate as a reseller of interexchange telecommunications services in South Carolina would be in the best interest of the citizens of South Carolina.

by increasing the level of competition in South Carolina, by providing an alternative source for telecommunications services, and by creating incentives for lower prices, more innovative services, and more responsive customer service.

7. Telmex has no current plans to maintain offices in South Carolina and requests a waiver of 26 S.C. Code Ann. Regs. 103-610. The Commission finds Telmex's requested waiver reasonable and understands the difficulty presented to Telmex should the waiver not be granted. Further, we find that a waiver of 26 S.C. Code Ann. Regs. 103-610 to be in the public interest. We also believe that exemption from the policies that would require the Company to keep its records under the USOA is reasonable.

8. The Company has the managerial, technical, and financial resources to provide the services as described in its Application.

9. As a condition to authorizing Telmex to offer prepaid calling cards in South Carolina, Telmex should be required to post a bond with the Commission in the amount of \$5,000 in the form of a Certificate of Deposit or Surety Bond.

#### **CONCLUSIONS OF LAW**

1. The Commission concludes that Telmex possesses the managerial, technical, and financial resources to provide the telecommunications services as described in its Application.

2. The Commission concludes that Telmex will participate in the support of universally available telephone service at affordable rates to the extent that Telmex may be required to do so by the Commission.

3. The Commission concludes that Telmex will provide services which will meet the service standards of the Commission.

4. The Commission concludes that approval of Telmex's Application to provide intrastate telecommunications services within South Carolina will serve the public interest by enhancing competition in the State of South Carolina by offering additional service offerings to South Carolina's consumers and by providing for efficient use of existing telecommunications resources.

5. The Commission concludes that the provision of telecommunications service by Telmex will not adversely impact the public interest.

6. The Commission concludes that the issuance of the authority to provide interexchange telecommunications service as requested by Telmex and as set forth in its Application and Mr. Marban's testimony is in the best interests of the citizens of the State of South Carolina.

7. The Commission concludes that a Certificate of Public Convenience and Necessity should be granted to Telmex to provide intrastate interexchange telecommunications services.

8. The Commission adopts a rate design for Telmex for its residential interexchange services which includes maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

9. Telmex shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. Telmex shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp.2005).

10. The Commission concludes that Telmex's intrastate interexchange business telecommunications services shall be regulated in accordance with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Commission has previously granted this "alternative regulation" to competitive intrastate interexchange carriers operating within South Carolina, and the Commission concludes that the competitive marketplace requires the Commission to allow this flexible regulation to those carriers which request it. Specifically, the Commission-approved alternative regulation allows business service offerings, including consumer card services and



operator services, to be subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission.

11. We conclude that Telmex’s request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted as strict compliance with the regulation would cause undue hardship on Telmex. We also grant exemption from the policies requiring the use of USOA.

12. The Settlement Agreement between the parties should be approved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity should be granted to Telmex to provide intrastate interLATA service and to originate and terminate toll traffic

within the same LATA, as set forth herein, through resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission. The Company is also specifically authorized to provide resold inbound and outbound interexchange telecommunications services.

2. The Company's rate designs for its products shall conform to those designs described in Conclusions of Law above.

3. If it has not already done so by the date of issuance of this Order, Telmex shall file its revised tariff and an accompanying price list for any applicable rates within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, as well as the provisions of the Telmex-ORS Settlement Agreement.

4. Telmex is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

5. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier if the end-user so desires.

6. Telmex shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Telmex changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, Telmex shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, Telmex shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. As a condition of offering prepaid calling cards, Telmex shall be required to post a surety bond or certificate of deposit in the amount of \$5,000 with this Commission prior to their offering such services in South Carolina. This requirement shall be reviewed on an annual basis.

9. Telmex shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Telmex shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at [www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp) or at the ORS's website at [w.w.w.regulatorystaff.sc.gov](http://w.w.w.regulatorystaff.sc.gov). The title of this form is "Telecommunications Company

Annual Report.” This form shall be utilized by the Company to file annual financial information with the Commission and ORS and shall be filed no later than **April 1<sup>st</sup>**.

Commission gross receipts forms are due to be filed with the Commission and ORS no later than **August 31<sup>st</sup>** of each year. The proper form for filing gross receipts information can be found at the ORS website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov), and the appropriate form is entitled “Gross Receipts Form.”

Each telecommunications company certified in South Carolina is required to file annually with the ORS the Intrastate Universal Service Fund (USF) worksheet, which may be found on the ORS’s website at [www.regulatorystaff.sc.gov](http://www.regulatorystaff.sc.gov). This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than **August 15<sup>th</sup>** with the Commission and ORS.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Telmex shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at [www.psc.sc.gov/reference/forms.asp](http://www.psc.sc.gov/reference/forms.asp); this form shall be utilized for the provision of this

information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced.

11. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

12. At the hearing, Telmex requested a waiver of 26 Code Ann. Regs. 103-610 (Supp. 2005), which requires that records required by the Commission's Rules and Regulations be maintained in South Carolina. The record reveals that Telmex's principal headquarters will be located outside of South Carolina. Telmex requests permission to maintain its books and records at its headquarters in its home office. The Commission finds Telmex's requested waiver reasonable and understands the difficulty presented to Telmex should the waiver not be granted. The Commission therefore grants the requested waiver that Telmex be allowed to maintain its books and records at its principal headquarters. However, Telmex shall make available its books and records at all reasonable times upon request by the Office of Regulatory Staff, and Telmex shall promptly notify the Commission and ORS if the location of its books and records changes.

13. Telmex also requests that it be exempt from record keeping policies that require a carrier to maintain its financial records in conformance with the Uniform System of Accounts (USOA). The USOA was developed by the FCC as a means of regulating telecommunications companies subject to rate base regulation. As a competitive carrier, Telmex maintains its book of accounts in accordance with Generally Accepted Accounting Principles (GAAP). GAAP is used extensively by interexchange

carriers and other providers. Accordingly, Telmex requests an exemption from the USOA requirements. We grant the Company's request for the reasons stated above.

14. The Settlement Agreement between Telmex and ORS is hereby approved.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

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Randy Mitchell, Chairman

ATTEST:

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G. O'Neal Hamilton, Vice-Chairman

(SEAL)